IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 12TH DECEMBER 2006 / 21ST AGRAHAYANA 1928

WP(C).No. 26306 of 2006(F)

O.S.88/05 OF ADDL.MUNSIFF COURT, CHERTHALA

PETITIONER:

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1. CELIN, W/O. LATE JOSEPH,
   THYVELIKKAKATH, NAROTH ROAD, THAMMANAM,
   ERNAKULAM, KOCHI.

2. T.J.MAHEW, S/O.LATE JOSEPH,
   THYVELIKKAKATH, NAROTH ROAD,
   THAMMANAM, ERNAKULAM, KOCHI.

BY ADV. SRI.V.L.SHENOY

RESPONDENTS:

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1. THOMAS JOHNSON, THARAPARAMBIL,
   VELIKKAKATHU, NEAR ILLICKAL VAZHI,
   THANNIKKAL WEST, VETTACKAL.

2. SALI @ JOSEPH SALI, S/O VARUTHU,
   VALIYA VEETTIL (MACHINGAL),
   VETTACKAL, CHERTHALA.

3. ST.MARY'S FORANE CHURCH,
   THANKEY, REPRESENTED BY VICAR REV.FR.JOHN MANAKKAT
   S/O.CHEEKKU, MANAKKATT HOUSE, KADAKKARAPPALLY,
   CHERTHALA.

4. THOMAS, TRUSTEE OF ST.MARY'S FORANE
   CHURCH, RESIDING AT CHULLICKAL HOUSE,
   KADAKKARAPPALLY, CHERTHALA.

BY ADV. SRI.JOBY CYRIAC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.26306 OF 2006

Dated 12th December 2006

JUDGMENT

Petitioners are plaintiffs in O.S.88/05 on the file of Additional Munsiff court, Cherthala. Respondents are defendants. Petitioners filed I.A.2609/06 an application for appointment of a commissioner to identify the property with the assistance of surveyor. Under Ext.P5 order that petition was dismissed. This petition is filed under Article 227 of Constitution of India challenging Ext.P5 order.

2. Learned counsel appearing for petitioners and respondents were heard.

3. Argument of learned counsel appearing for petitioners is that in the written statement defendants disputed the description of plaint schedule property and in such circumstances it is necessary to take out a commission to identify the property and therefore Ext.P5 order is to be set aside.

4. Under Ext.P5 order learned Munsiff has

specifically recorded that respondents have not disputed the identity of property. Learned counsel appearing for respondents/defendants also asserted that defendants are not disputing the identity of the plaint schedule property. In such circumstances no interference is warranted in Ext.P5 order.

Writ petition is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.